

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

ANTHONY SAMUEL DILLARD,

Petitioner,

v.

STATE OF ALASKA, *et al.*,

Respondents.

Case No. 3:23-cv-00219-SLG

**ORDER RE REPORT AND RECOMMENDATION**

Before the Court at Docket 1 is Petitioner Anthony Samuel Dillard's Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. The motion was referred to the Honorable Magistrate Judge Matthew McCrary Scoble. At Docket 24, Judge Scoble issued his Report and Recommendation, in which he recommended that the motion be dismissed without prejudice. At Docket 25, Mr. Dillard filed pro se objections to the report and recommendation. Respondents filed a reply at Docket 26.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."<sup>1</sup> A court is to "make a de novo determination of those portions of the magistrate judge's report

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<sup>1</sup> 28 U.S.C. § 636(b)(1).

or specified proposed findings or recommendations to which objection is made.”<sup>2</sup> However, § 636(b)(1) does not “require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”<sup>3</sup>

The Magistrate Judge recommended that the Court dismiss the § 2241 Petition without prejudice. On *de novo* review, the Court agrees with the Magistrate Judge’s analysis. Relief under § 2241 is not available to convicted state prisoners. And relief under 28 U.S.C. § 2254 is only available to state prisoners who have fully exhausted their state court remedies. Thus, dismissal without prejudice of this case is warranted, irrespective of any difficulties in the lawyer/client relationship between Mr. Dillard and the Federal Public Defender’s Office. Accordingly, the Court adopts the Report and Recommendation in its entirety, and IT IS ORDERED that the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 at Docket 1 is DISMISSED WITHOUT PREJUDICE.

The Clerk of Court shall enter a final judgment accordingly. A Certificate of Appealability shall not issue.<sup>4</sup> Petitioner may request a certificate of appealability from the Ninth Circuit Court of Appeals.

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<sup>2</sup> *Id.*

<sup>3</sup> *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

<sup>4</sup> 28 U.S.C. §2253(c)(2). *See also Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (A certificate of appealability may be granted only if applicant made a “substantial showing of the denial of a constitutional right[.]” *i.e.*, a showing that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were

DATED this 1st day of November 2024, at Anchorage, Alaska.

/s/ Sharon L. Gleason

UNITED STATES DISTRICT JUDGE

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adequate to deserve encouragement to proceed further”) (internal quotations and citations omitted.).

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